

PATENT

Attorney Docket No.: 391844
Express Mail Label No.: EV 008782590 US

REMARKS

Claim 1 has been amended to more particularly claim Applicants' invention. Support for the amendment to claim 1 that the base section has a first side is found in the specification at least at page 1, line 29. Additionally, Figures 1 and 2 depict the polymeric article base section with a first side with projecting elements and a second side which typically would rest upon a surface. Support for the amendment to claim 1 that the projecting element has a base section and a terminal part is found in the specification at least at page 1, lines 17-20. No new matter is introduced by any amendments to claim 1.

Drawings:

Figures 3 and 4 are objected to because they are not identified as "prior art." Amended Figures 3 and 4 attend to this objection; and reconsideration and withdrawal of the objection is respectfully requested.

Restriction Requirement:

Claims 1-33 are subject to a restriction requirement under 35 U.S.C. § 121 as follows:

Group I: Claims 1-15, drawn to a molded polymeric article, classified in class 428, subclass 92.

Group II: Claims 16-25, drawn to polymer molding apparatus, classified in class 425, subclass various.

Group III: Claims 26-33, drawn to a method for forming a multi-polymer article, classified in class 264, subclass various.

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The requirement for restriction under 35 U.S.C. § 121 is respectfully traversed. With regard to the requirement for restriction, however Applicants provisionally elect the invention in Group I, Claims 1-15.

The Examiner has claimed the inventions in Groups I and II are distinct. The Examiner, citing MPEP § 806.05(g), states that “inventions . . . are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus.” The Examiner has stated that the product can be made with a traditional apparatus wherein the two separate polymers can be joined in the molds by injecting them one on top of the other rather than in two separate ports. Applicants respectfully disagree with the Examiner. The traditional apparatus cannot be used to produce the claimed product where at least some terminal parts of the the projecting elements are formed from a second polymer.

The Examiner has also claimed that the inventions in Groups I and III are distinct. The Examiner citing MPEP § 806.05(f), states that “inventions are distinct if either or both of the following can be shown: (1) the process as claimed can be used to make another materially different product, or (2) that the product as claimed can be made by another and materially different process.” The Examiner has stated that two separate polymers can be joined in the molds by injecting them one on top of the other rather than in two separate ports. Again,

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Applicants respectfully disagree with the Examiner. Injecting two separate polymers at different times in a traditional apparatus cannot be used to produce the claimed product.

The Examiner has also claimed that the inventions in Groups II and III are distinct. The Examiner citing MPEP 806.05(e), states that "inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process." The Examiner has stated that the apparatus can be used in a process involving only one polymer rather than two different polymers.

However, with regard to the restriction, whether or not the article of Group I could be produced with a molding apparatus different from Group II, or the article of Group I could be produced by a method different from Group III, or the molding apparatus of Group II could utilize a method different from Group III is not believed to be determinative of the issue of distinctiveness.

The Examiner has also indicated in the Office Action that because the inventions of Group I and II, Group I and III and Group II and III have acquired a separate status in the art as shown by their different classification, restriction for examination purposes is proper. Applicants respectfully disagree. The PTO classification system is not controlling when determining unit of invention, and has long been held as insufficient grounds upon which to base a restriction requirement. *Ex parte Milas*, 71 U.S.P.Q. 212 (Bd. App. 1946), *Ex parte Musselman*, 94 U.S.P.Q. 212 (Bd. App. 1949).

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The potential burden upon Applicants in securing meaningful patent protection clearly outweighs those at the PTO. The court in *Weber* stated:

We have decided in the past that 112, second paragraph, which states in part' [t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicants regard as the invention,' allows the inventor to claim the invention as he contemplates it." *In re Weber*, 198 U.S.P.Q. 328, 331 (C.C.P.A. 1978).

Furthermore, when weighing the effect of "such administrative matters as examiner case loads and the amount of searching done per filing fee" versus the statutory rights of the Applicants, the *Weber* court stated, "We conclude that the statutory rights [of the applicant] is paramount." *Id.* at 332.

Applicants therefore respectfully request the Examiner reconsider the restriction of the invention in view of Applicants' arguments as provided herein, and proceed with examination of claims 1-33 of the instant invention.

35 USC § 112, ¶ 2 Rejections

The Examiner has rejected claims 1-15 under 35 USC § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants' amendments to claim 1 have addressed this rejection and Applicants kindly request reconsideration and withdrawal of the 35 USC § 112 ¶ 2 rejection.

The Examiner has rejected claim 1 under 35 USC § 112 ¶ 2 due to insufficient antecedent basis. Applicants' amendments to claim 1 have addressed this rejection and Applicants kindly request reconsideration and withdrawal of the 35 USC § 112 ¶ 2 rejection.

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Claim Rejections - 35 USC § 102(b)

Claims 1, 2, 5-8, 10, 12 and 15 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 3,507,010 (“Doleman”). Applicants respectfully disagree that there is no suggestion in the claims that the two polymers have to be different in any manner. Amended claim 1 reads “ . . . wherein at least some terminal parts of said projecting elements are formed from a second polymer material.” (Emphasis added). This language clearly teaches the use of a second polymer to form the terminal parts of at least some of the projecting elements. Claim 8 lends additional support to the position that more than one polymer is contemplated for use in this invention. The language “ . . . at least one of said polymers is polyethylene” clearly suggests that more than one polymer is contemplated for use which is contrary to the single thermoplastic teachings of Doleman. Claim 1 clearly teaches the use of a second polymer and accordingly, claim 1 patentably distinguishes over Doleman and reconsideration is requested.

Claims 2, 7, 12 and 15 depend from claim 1 and have additional features to patentably distinguish over Doleman. Notably, claim 2, for example, requires a first and second polymeric material that contain respectively a first and second colored pigment. Claim 15 also requires the use of a polymer for at least some of the terminal parts of the projecting elements that is distinct from polymer that is used in the remainder of the projecting element. Doleman does not teach the use of a second polymeric material. Claims 2, 5-8, 10, 12 and 15 depend directly or indirectly from claim 1. As these dependent claims include all of the elements of claim 1, which is now believed to be allowable over Doleman, Applicant asserts that these claims are also

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allowable. Withdrawal of the rejection of pending claims 2, 5-8, 10, 12 and 15 is respectfully requested.

Claims 1, 2, 5-8, 12, 13 and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,329,196 (“Rawlinson”). Applicants respectfully disagree. Rawlinson teaches a method of fusion bonding a heat sensitive three dimensional thermoplastic layer to a substrate without damaging the three dimensional structure. Rawlinson does not teach a unitary article with a base section and a portion of the projecting elements formed from one polymer and at least some terminal parts of the projecting elements formed from a second polymer material. (Emphasis added). The unitary nature of the present invention distinguishes it from Rawlinson wherein a substrate and a three dimensional layer consisting of a single polymer are bonded to one another. Accordingly, claim 1 patentably distinguishes over Rawlinson and Applicants respectfully request that the Examiner withdraw the 35 U.S.C. § 102(b) rejection of claim 1 based on the Rawlinson reference.

Claims 2, 5-8, 12, 13 and 15 depend from claim 1 and have additional features to patentably distinguish over Rawlinson. Notably, claim 2 details the use of two polymeric materials each with their own colored pigment. Rawlinson does not teach the use of two distinct colored pigments in the three dimensional layer but only the use of a single colored polymer. The present invention claims the use of a second polymeric material to form a portion of the projecting elements and distinct pigments to provide distinct color to the separate portions of the projecting elements. As these dependent claims include all of the elements of claim 1, which is

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believed to be allowable over Rawlinson, Applicants assert that these claims are also allowable.

Withdrawal of the rejection of pending claims 2, 5-8, 12, 13 and 15 is respectfully requested.

Claims 1, 2, 5-10, 12, 14 and 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,004,376 (“Schepp”). Applicants respectfully disagree. With regard to claim 1, and among other distinguishing features, Schepp does not teach or suggest a base section formed from one polymer material and at least some terminal parts of projecting elements formed from a second polymer material. In fact, Schepp, at column 1, lines 65-68, relies upon the continuous molding injection technique already discussed above by Doleman (U.S. Patent No. 3,507,010). Schepp teaches the securing of the brushing surface to the non-woven backing by a mechanical bonding procedure, such as adhesive bonding, but does not teach the formation of terminal parts of the projecting elements be formed from a second polymer. Accordingly, claim 1 patentably distinguishes over Schepp and withdrawal of the rejection of pending claim 1 is respectfully requested. Claims 2, 5-10, 12, 14 and 15 depend directly or indirectly from claim 1 and have additional features to patentably distinguish over Schepp. As these dependent claims include all of the elements of claim 1, which is now believed to be allowable over Schepp, Applicant asserts that these claims are also allowable. Withdrawal of the rejection of pending claims 2, 5-10, 12, 14 and 15 is respectfully requested.

Claims 1, 2, 5-10, 12, 13 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,357,388 (“Holtrop”). Applicants respectfully disagree. Claim 1 teaches a base section formed from one polymer and at least some terminal parts of projecting elements

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formed from a second polymer material. (Emphasis added). Holtrop teaches projections being separately formed of one material in a grid and then bonded to a planar base, optionally of a different material (column 2, lines 27-30). Claim 1 of the Applicants' invention is distinguishable from Holtrop in that it requires the use of different materials in the projections themselves. Accordingly, claim 1 patentably distinguishes over Holtrop and Applicants respectfully request the Examiner withdraw the 35 U.S.C. § 102(e) rejection of claim 1 based on the Holtrop reference.

Claims 2, 5-10, 12, 13 and 15 depend either directly or indirectly from claim 1. As these claims include all of the elements of claim 1, which is now believed to be allowable over the cited reference, Applicants assert that these claims are now allowable. Withdrawal of the rejection of pending claims 2, 5-10, 12, 13 and 15 is respectfully requested.

Claim Rejections - 35 USC § 103

Claims 3, 4 and 11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Doleman, Rawlinson, Schepp or Holtrop. The Examiner contends that with regards to claims 3, 4 and 11, the references do not disclose the specific manner in which the article is to be dyed. The Examiner further contends that it would have been obvious to one skilled in the art to select a dying pattern where parts of the substrate are dyed with one color and other parts are dyed with a different color in order to make a substrate with improved aesthetics. Applicants respectfully disagree with the Examiner on the relevance of the dyeing of the substrate as the claimed article has the different colors molded into the projecting elements during production of the article.

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Claims 3, 4 and 11 specifically require the different pigments to be in the two polymers as discussed at least on page 3, lines 18-20 of the specification which provides that the two polymer materials are different either as distinct polymer compositions or as containing distinct colored pigments.

To establish prima facie obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ 1596 (Fed. Cir. 1988). Applicants' claim 1 teaches that at least some terminal parts of the projecting elements are formed from a second polymer which patentably distinguishes over Doleman, Rawlinson, Schepp and Holtrop. Pursuant to the holdings in *Royka* and *Fine*, claims 3, 4 and 11 which indirectly depend from claim 1 of the present invention, are also nonobvious. As these dependent claims include all of the elements of claim 1, which is now believed to be allowable over the cited references for the reasons set forth above, Applicants assert these claims are also allowable. Withdrawal of the rejection of pending claims 3, 4 and 11 is respectfully requested.

It is respectfully requested in accordance with the amendment of claim 1 and the discussion above, that the rejection of claims be considered and claims 1-15 be found allowable. In addition, Applicants respectfully request that claims 16-33 be found allowable.

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Should the Examiner believe the issues remain outstanding, the Examiner is respectfully requested to call Applicants' undersigned attorney in an effort to resolve such issues and advance this application to issue.

Respectfully submitted,

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Marked Up Claim

1. (Once Amended) A three dimensional, unitary, molded, polymeric article comprising a generally planar [two dimensional] base section with a first side and a second side formed from one polymer material and at least one projecting element with a base section and a terminal part, the projecting element extending from [one] the first side of said base section, wherein at least some terminal parts of said projecting elements are formed from a second polymer material.